Bostt. II-27—40,000—11-36

Home (1937) Department.

Miscellaneous SERIES.

G.O. No. 2511

DATED ~~3-10~~ July 1937

[Despatch Abstract.]

Prosecution - Assistant Inspector of Excise, Mangalore

Sanction of Government in a certain case - Considered unnecessary.

5

8 - JUN 1937

15.6.37

Rc 2363D

15=6.37

Ref.C1-1419-M/37.

Endorsement by T. A. Varghese, Esq., I.C.S., District Magistrate, South Kanara.

12 JUN 1937
CHIEF SECTT.

16536

Submitted.

2. The occurrence referred to in the petition is under police investigation. The final report has not been received.

3. The Assistant Commissioner of Excise, West Coast Sub Division, Cannanore states that he has gone into the matter after a local visit. I have called for a report from him; but have not received it.

4. The petitioner prays for sanction to prosecute the Excise Assistant Inspector, Mangalore. Under the Rules issued under Classification Rule 54 regarding Subordinate Services, in G.O.No.2034 Public (Services) Department, dated 10.12.1936, the authority to remove or dismiss an Assistant Inspector of Excise is the Commissioner of Excise. According to the decision of the Madras High Court in 58 Madras 787, the sanction of the Local Government is not necessary to prosecute this class of public servants. If the Government consider that sanction is required I shall send a further report on the merits of the case. I am enclosing a copy of the letter from the Public Prosecutor, Mangalore whom I have consulted on the point.

S.Kanara Dt.Magistrate's Office,
Mangalore, 5th June 1937.

5/6

For Dt.Magistrate.

5.6.37

To

The Chief Secretary to Government,
Public Department,
M a d r a s.

Chief Secty
Revenue

12/6
14

From M.R.Ry. K. Sadashiva Rao, Avl., B.A., M.L.,
Public Prosecutor and Government Pleader, Mangalore.
To the District Magistrate, South Kanara, Mangalore.
Mangalore, dated 29.5.1937.
Ref.No.B.19/37.

CRIMINAL JUSTICE - Scope of Section 197 Cr.P.C.

Ref:- Your letter Cl.1419-M-37 dated 27.5.1937.

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1. On the above point it seems to me that there is not much doubt that the privilege given by Section 197 Cr.P.C. is limited to only a Judge, a Magistrate and to such public servants as are not removable from their office save by or with the --- sanction of the Local Government or higher Authority and does not extend to all public servants irrespective of the fact --- whether they are appointed or removable by the Local Government or some higher Authority e.g. peons in the Excise department.

2. As pointed out by you, section 197 Cr.P.C. restricts this privilege only to certain public servants. The question is whether Judicial decisions have enlarged this privilege to all public servants by whomsoever appointed. The decision reported in 52 Madras 602 does not appear to me to go so far. A careful reading of the decision would show that this point was neither raised specifically nor decided therein. In that case the prosecution was against a village Magistrate, who would be entitled to the privilege by virtue of his being a Magistrate. It may be noted that all Magistrates and Judges are entitled to claim the protection of Section 197 and the words in the section "not removable from his office save by the --- sanction of the Local Government or higher Authority "do not qualify "Judge or a Magistrate" in the Section, but only the "Public Servants". In paragraph 3 of the Judgment the Judges are careful to use the word that certain public servants shall not be prosecuted without the sanction of the Local Government. The point that was considered in great detail in that case was the significance of the words "while acting or purporting to act in the discharge of his official duties", which words they say, should be construed liberally. Viewed in this light,

the decision in 52 Madras 602 does not go counter to the plain meaning of the section and the current of authorities on the point.

3. A later case reported in 58 Madras 787 = 1935 Madras 442 is more in point. It discusses in detail the question as to whether public servants who are appointed and can be dismissed by authority obtained by delegation from the Local Government are entitled to the privilege of Section 197. The view held in two earlier cases of the Madras High Court reported in A.I.R. 1917 Madras 314 by Courts Trotter.J., and in 1934 Madras Weekly Notes 370 by Bardswell.J., that the privilege would extend to such public servant was negatived in this case. It clearly holds that "the expression any public servant who is not removable save by the sanction of the Local Government or some higher Authority will not include Public Servants whom some lower Authority has by Law or by rule or order been empowered to remove." Hence Police Constables and Sub Inspectors are held not to come within the benefit of this section. This being a division bench case might be considered to have over-ruled the earlier cases reported in 1917 Madras 314 and 1934 Madras Weekly Notes 370.

4. I have not referred to the decisions of the other High Courts because of the decision of our own High Court reported in 58 Madras 787.

(True copy)

For Dt. Magistrate.

To

The Local Government,

Government of Madras.

Through

The District Magistrate & Collector,
South Kanara,
Mangalore.

A | Francis alias Duming Pinto s/o John Pinto, Kankanady Village, Mangalore Taluk) Complainant Petitioner

Versus

H. J. D'Souza, Excise Assistant Inspector, Mangalore) Accused Counter-Petitione

Application under Section 197 Cr. P.Code.

The petitioner above-named begs to state as follows:-

On the morning of 8- 5- 1937 at about 8 A M. the counter-petitioner along with other Excise subordinates and peons appeared to have searched the house of one Antony Souza, son of Pedru Souza of Kankanady, for contrabands and not having found anything, appeared to have been trying to foist some contrabands on him and I found him in the midst of the counter-petitioner and the other Excise people about 15 in all with some contrabands in an open bettu field near his house. The Excise Officers were found by me ill-treating the said Antony Souza in compelling him to own to the contrabands. The Excise people were mostly armed with lathis and iron-rods. When I interfered on behalf of the said Antony Souza, the counter-

petitioner with the other Excise people surrounded both of us and assaulted and beat us with their lathis and iron-rods. We cried out and Intru Souza the brother of the said Antony Souza and his nephews Monthu Souza and Sila Souza came to our help from among the neighbours that gathered there. The Excise people assaulted them also and caused severe injuries on all the five of us. The hands of all the five of us were tied at the back and the Excise people began to bit us with lathis and iron rods and with the ends of the lathis, mercilessly while we were in a helpless condition. The counter-petitioner was all along inciting and ordering his men to beat us. As the Excise men were all armed with dangerous weapons like lathis and iron roads and the counter-petitioner had even a revolver and was brandishing it threatening to shoot anybody that might interfere with them, none of the several neighbours that gathered there dared to interfere and save us. When Intru Souza fell down counter-petitioner kicked him with his boots on the chest. As a result of the injuries inflicted upon us, myself, Intru Souza and Monthu Souza fell down unconscious in the field.

After we became unconscious the counter-petitioner and the Excise people appear to have ceased beating us and went and were taking shelter in the house of a Brahmin neighbour and under the trees ~~th~~ nearby. When our friends and relations were trying to come near us to give us first aid the Excise people would not at first allow them to render us any sort of help. When our friends and relations offered to take us to the hospital, the Excise men would not allow that

also.

At about 12.15 Mr. C. L. Lobo, Vakil, Mangalore, who is a relation of Antony Souza and Intru Souza came to the field and finding us lying still in the field in the hot sun offered his help in removing the injured men to the Hospital. But it would appear that the Excise Inspector said that as he had already sent a report to the Police, the Police themselves would soon come and remove them.

A little later the Potail who had been sent for by us also came there. The Excise people went away. I understand the Potail immediately sent a report to the Police.

Some time afterwards two Constables came there with some Excise men and were having consultation with the Excise people some of whom had returned, when our friends asked them permission to remove us to the hospital, they would not permit them on the ground that they were going to send a report to the Station and that we should not be removed until the Inspector of Police came. As none came till about 5 P.M. our friends and relations inspite of the protest of the Excise and the Police people had us carried to the hospital where our injuries were dressed and where the Sub-Inspector came subsequently recorded our statements. All five of us were admitted as inpatients in the hospital.

The high-handed action of the counter-petitioner and his Excise people in first trying to foist contrabands on Antony Souza and then assaulting us

with dangerous weapons and inflicting serious injuries upon us clearly comes under Sections 148, 211 326 and several other Sections of the Penal Code.

The counter-petitioner and his subordinates are men of position and influence and as far as I have been able to gather have already turned our several of the neighbours and other witnesses and are each day trying to win over more, so that their high-handed action may be covered up.

Three of the injured men Antony Souza, Intru Souza and Monthu Souza are still in the hospital and are unable to move about. The petitioner also though discharged is still weak and has pain and is not completely fit to easily move about.

As high-handed action of this nature, engineered and committed by officers of the position of an Assistant Inspector of Excise in broad daylight ought not to go uninquired and in justice to the petitioner (complainant) and the other injured men and in the interest of public justice also, a judicial inquiry should be held in the matter. As the counter-petitioner the Assistant Inspector is likely to put forward the plea that he was purporting to act in his official capacity to cover up his misdeeds, sanction under Sec. 197 Cr. P. Code might be considered necessary before inquiring into the complaint against him. It is, therefore, prayed that in the interest of public justice the necessary sanction may be accorded.

Mangalore,
14-5-1937.

J. Pinto

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Rev. Dept.

Prosecution. Asst Supdt of Excise, H T D'Souza v South Kanara &c.

C No 2367D/37. From the Dt. Magistrate of South Kanara, Ref C 1-1419-H/37 dt 5-6-37.

To Asst Secy.

Please see letter from the Dt. Magistrate, South Kanara & its enclosures in the c.f. It does not appear that sanction of the Govt. is necessary in this case, as the person sought to be prosecuted does not fall within the class of persons referred in sec. 197 of the Criminal Procedure Code. As orders on cases of this sort are issued in the Home Dept., the file may be sent to that Dept. for the issue of necessary orders.

(A letter received from Anthony Souza who is alleged to have been attacked was transferred to the Board of Rev. for disposal)

R 21.6.37

h 126 of the Home p.l up

cf Go 114 Home dt (L) 7-1-37 see also Standing note at (C)

1937 D

25/6/37

ASSISTANT SECRETARY TO GOVERNMENT 1937 25 JUN 1937 HOME DEPARTMENT (I)

18/6/37

21.6.37

Rev. Dept. No. 2363D/37-1 23-6-37 with the (C) Labour Dept. file

(1) D.L.R. Mad LVIII-1935
(2) Mad. Weekly Notes-1934
(3) Cr.P.C.

HOME SECRETARIAT 24 JUN 1937 GOVT OF MADRAS

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14

Home Dept.

A.S.

1

Please see the Rev. Department note on page 1 ante, for orders whether the view of that dept. taken at R on p 1 ante may be accepted in this dept and the petitioner informed that the sanction of Govt. is not necessary to prosecute Mr. H. J. D'Souza, Extra Asst. Supdr. Mangalore for offences alleged to have been committed by him.

(Reference is however, solicited in this connection to G.O. No. 479 Home dated 7.5.36 (a similar case disposed of in (R) (re: prosn. of an Asst. Supdr. of customs) in which orders were issued declining to accord the sanction prayed for.)

28.6.37:

The sanction of Govt for prosn does not appear to be necessary — see para 3 of the Law PP.'s opinion on p 4 ante:

28/6

S

A.S.

Draft order submitted for approval.

2-7-1937

SECRETARIAT

Rev. may perhaps see the case, after issue of the order, with reference to any further action, if necessary on paras 2 and 3 of the S. Mo's indorsement

h/c.

Done.
Hem 6 Rev
[illegible]
7/7

Issued.
2511 Home/2.7.37 (G)
2.7.37
2.7.

Rev. dept.

To Asst Secy.

No further action seems called for in this dept in paras 2 & 3 of the S M's letter in h/c. A copy of the order may be communicated to the Board together with the S.M's Encl. & enclosures — which must be put up in the linked file. This may be returned to Home after issue of the Encl in the l.f.

5/7/37 S.R.D 8.7.37

8.7.37

Rev. no. 2585-D/37-1
12/7/37

Home
Home Dept.

A.S.

The file may now be closed.

12/7/37

12/7/37

12/7

Done W.O. 4987-D-1
3/7/37

Rev 2585-D
5/7/37

5/7/37

5 JUL 1937

With 3 books.
(1) I.L.R. Mad. LVIII-1935
(2) Madras Weekly notes 1934
(3) C.R.

16

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..		
When copied ..		
When examined..		
When signed ..		
When despatched.		

SUBJECT:— Home Department

Prosecution ~~H. J. D'Souza Excise~~ of Excise, Assistant Inspector, Mangalore - Sanction of Govt. in a certain case - Considered unnecessary.

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO*:—

No 4987. From the Mer. Trayee's alias Suming Prabhu, Mangalore No. ~, dated 14.5.1937. P5

" _____ the D. M. South Kanara RC/C1-1419-M/37 D/ 5.6.1937. P1 C5

" _____ " _____ " _____ 19____.

~~Resolution~~ Order ~~Rout.~~ Ms. No. 2511, dated 2-7 1937.

Vide 'A' on P2 ntf.

To

1. The Petitioner (A'on P2 ntf.)
Copy to the D. M. South Kanara
Copy to the Rev. department.

The Sanction of Govt. is not necessary to prosecute Mer. H. J. D'Souza, ~~Excise~~ Asst. of Excise Inspector Mangalore, for the offences alleged to have been committed by him.

2.7.37.

BBR 2/7

Dpd. by Vasu Iyer Mangr

Dpr.'s initials. 2/7

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